IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7561 OF 2005

Sunil Hanumantrao Koppal Applicant

versus

The State of Maharashtra Respondent

Shri Niteen Pradhan with Ms.S.D.Khot and Maheen Pradhan for applicant.
Shri S.L.Maneshinde, adv. for original complainant.
Shri R.Y.Mirza, APP for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 2nd December 2005
PC :

1. Heard Shri Pradhan for the applicant, Shri Mirza for State and Shri Maneshinde for original complainant.

2. The petitioner is accused no.3 in CR No.70/2005 registered with Economic Offence Wing, Crime Branch, CID, Mumbai upon a complaint lodged by the Chief Executive Officer of M/s.Universal Medicare Private Limited. The offences alleged are punishable under sections 406, 408, 420, 465, 471, 477A R/W 34 and 120B of the IPC..

3. It is not disputed by the learned counsel appearing before me that the applicant was detained pursuant to this CR and is presently in

custody. Although, great emphasis has been led on the fact that the applicant applied for anticipatory bail which was initially granted but cancelled by this Court, in my view, that could not have any bearing on this application. The present applicant is filed upon investigation being complete, charge sheet being filed and the applicant having been in custody from 25th September 2005.

4. The submission of Shri Pradhan is that insofar as role of present applicant is concerned, all that is alleged is that the applicant has in association with the main accused (S.G.Teredesai) been a beneficiary, in the sense, several amounts have been received by him. The allegation is that the said S.G.Teredesai purported to represent the company and allegedly appointed present applicant as a Consultant/Liasoning Officer for several acts which are to be performed on behalf of company in Government Departments etc.. This applicant is a former employee of DPPL which is a group company. It is alleged that he was in constant touch with the main accused. It is alleged that he may have been involved in making various false documents allegedly under the instructions of main accused.

Such documents have been utilised from time to time with a view to perpetrate a fraud on the company and misappropriate huge amounts belonging to the same. Further, it is alleged that one VSA Enterprises was paid an amount of Rs.17.17 lakh inspite of the fact that the company has no business transactions with this VSA Enterprises. The beneficiary in this case also would be the present applicant. It is alleged that the role of the applicant in the same is that he has prepared cheques which were thereafter drawn in favour of this entity.

5. In these circumstances, according to Shri Pradhan, the applicant cannot be said to be the main person responsible for the alleged fraud perpetrated on the company. A group company had utilised his services as an employee. After his resignation some 12 years back, according to Shri Pradhan, the applicant has represented the company in various ways. In this behalf, he invites my attention to certain documents annexed to the bail application including powers of attorney, appointment letters and orders of Government authorities before whom the applicant represented one of the group companies. It is inconceivable, according to Shri Pradhan, that if

no services were rendered, the amounts which are alleged to have been paid to the applicant, would at all be paid to him. That apart, considering the limited role ascribed to the present applicant, his detention further is not necessary. He is a permanent resident of Thane. He is an Income Tax Payer. He has roots in the society. He is presently having his consultancy services. There is no apprehension that if enlarged on bail he would commit a breach of the terms and conditions upon which he is so enlarged or in any manner tamper with the prosecution witnesses or would be unavailable at the trial. That apart, Shri Pradhan submits that he is willing to abide by such conditions including attending concerned Police Station.

6. This application is vehemently opposed by Shri Maneshinde. He firstly relies upon the fact that the main accused (Teredesai) as well as this applicant are hand-in-glove in defrauding the company. He states that there is absolutely no privity of contract as far as applicant and the company. He states that not a single document is produced to show that the applicant was ever engaged by the company or that for his services any remuneration is paid from the bank accounts

of the company. He states that this is a huge fraud. The amount which is involved is enormous namely about Rs.83.00 lakh and has been paid to the applicant. A preliminary charge sheet is filed and further investigation is on. Because of the fact that several bail applications and other proceedings were moved, the Investigating Officer could not investigate and unearth the fraud. It is not as if seizure of files, accounts and papers for some years by the investigating authority can substantiate the allegations. The complainant would have to go backward from the time the applicant purported to represent the company in association with Teredesai and unearth several other papers and documents so as to file a further charge sheet. In these circumstances, this is not a case where the applicant should be enlarged on bail. There is every possibility that the applicant after enlargement on bail, would not be available for interrogation. Further, this is a case where this Court should defer the application in case it feels a prima case being made out by the applicant and upon giving an opportunity for further investigation and setting a time limit therefor, consider the pleas of shri Pradhan for enlargement of the applicant on bail thereafter.

The submission is that this crime is on par with other social crimes and Economic Offence ought not be viewed lightly. Hence, this is a fit case where the application be rejected. He relies upon following decisions viz. :-

i) AIR-2003-SC-3224 (State of Gujarat Vs. Salimbhai Abdulgaffar Shaikh and others);

(ii) AIR-2004-SC-4258 (State of Maharashtra Vs. Sitaram Popat Vetal and another);

iii) 2002-Cri.L.J.-1849 (Ram Govind Upadhyay Vs. Sudarshan Singh and others);

(iv) 2002-Cri.L.J.-2940 (Pawan @ Tamatar Vs. Ram Prakash Pandey and another).

7. Shri Mirza appearing for respondent State points out that the role of the applicant in the crime is that he is an associate of Teredesai. Together, they have siphoned off huge amounts belonging to the company. The group company is defrauded presently to the extent of Rs.9.84 crores and further investigation being permitted, the amount would go up. He submits that the applicant has not co-operated completely and has till date only furnished information in bits and pieces. He states that there is sufficient material to show that the applicant has committed offences as alleged. He states that in

connivance and collusion with Shri Teredesai, false and bogus appointment letters, documents, power of attorney have been prepared by the applicant and the amounts which are earned by him, have been utilised in buying a luxurious flat which is presently under his occupation. He states that the applicant has not been able to satisfy the investigating machinery about the privity with the company or any group company. In these circumstances, the application be dismissed.

8. With the assistance of learned counsel appearing for both sides I have perused the application, annexures thereto and the order passed by learned Sessions Judge. In my view, the sole proprietor of VSA Enterprises who is another accused in the crime, has been enlarged on bail. The role of the applicant and that of Shri Teredesai cannot be mixed up and confused. The statement of the complainant who is a responsible officer of the company, clearly states that in association with Shri Teredesai, the applicant may have been involved in making various false documents and that too under his instructions. The amounts also may have been misappropriated and utilised by this applicant

and Shri Teredesai from this fraud. As far as VSA Enterprises is concerned, it is alleged that inspite of having no business transactions with the group company, this entity is paid Rs.17.17 lakh by cheque which has been written by the applicant herein.

9. The applicant has annexed to the application a letter addressed to the investigating authority forwarding several documents which are in his custody and possession. The applicant has been detained from 25th September 2005. The investigations were going on prior thereto. A preliminary charge sheet has been filed and further investigations may be on but that is no ground to detain the applicant-accused considering the limited role which is assigned to him. Both Shri Maneshinde and Shri Mirza could not substantiate their pleas of non co-operation in investigation by the applicant. Even if further investigation is on, does not mean that the applicant can be denied bail. All conditions as arenecessary to complete the same effectively can be imposed on the applicant. In a huge fraud running into crores of rupees, it is no doubt true that the applicant may be a beneficiary, but ultimately, in all the offences alleged, material

will have to be shown prima facie about the role of the applicant. On mere statement that he may have been involved or he may have associated with the prime accused, his further detention is not necessary. That apart, it is well settled that a person being enlarged on bail, does not mean that no condition can be imposed on him to co-operate in further investigation or in the conduct of the trial. The applicant, it has been specifically stated in the application, has no criminal antecedents. The present case which is pending against him, is on the basis that despite not being associated with the company, he has been a beneficiary of the amounts siphoned off from the accounts of the company by the main accused Shri Teredesai. For this purpose, further documents may be necessary to be produced and seized. They can still be obtained. It has been pointed out that the applicant's hand writing samples have been obtained. The applicant is a permanent resident of Thane and carrying on consultancy business and has a family. There is no apprehension that he will abscond or not be available for trial or interrogation. All the judgements brought to my notice by Shri Maneshinde are laying down principles for grant of bail and the caution to be exercised while

granting such relief in the back drop of serious crimes. Economic offences also affect the society to a great extent. However, ultimately grant of bail is a matter governed by facts and circumstances in each case. The broad principles which are to be applied, are summarised in the recent decision reported in (2005)8-SCC-21 (State of U.P. through CBI Vs. Amarmani Tripathi WITH State of U.P. through CBI Vs. Madhumani Tripathi). The matters to be considered for grant of bail have been once again reiterated. While referring to earlier decisions, this is what is observed by the Supreme Court in paragraph 18 :-

> "18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnhesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (see Prahlad Singh Bhati Vs. NCT, Delhi and Gurucharan Singh V. State, Delhi Admn.). While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere

> presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant of refusal of bail stated in Kalyan Chandra Sarkar V. Rajesh Ranjan."

10. Thus, applying these principles, it is not that prima facie case being made out the application for bail should be rejected. There are other factors including nature and gravity of the charge, severity of the punishment in the event of conviction; danger of the accused absconding or fleeing if released on bail; character, behaviour, means, position and standing of the accused; likelihood of the offence being repeated, reasonable apprehension of the witnesses being tampered with and danger, of course, of justice being thwarted by grant of bail. Applying all these principles to the instant case, to my mind, no material has been produced, apart from alleging enormity of the amount and magnitude of the offence which would show that the applicant does not deserve bail or that his release would thwart the course of justice. The apprehension of Shri Maneshinde that enlarging the applicant on bail would amount to flooding this Court with applications of co-accused, is without substance. Ultimately,

the principle of parity also has some restrictions in it’s application. It is not a universal rule. It is not as if applicant being enlarged on bail that the prime accused or the other accused would get the benefit straight way. All materials as are available to displace the theory of parity, can always be placed whenever such applications are moved before this Court or Sessions Court. In these circumstances, this is a case where the applicant deserves to be enlarged on bail.

11. Accordingly, following order :-

(i) The applicant shall be enlarged on bail in connection with C.R.No.70/2005 registered with Economic Offences Wing, Crime Branch, CID, Mumbai, subject to furnishing a personal bond of Rs.50,000/- (Rs.Fifty thousand only) with one solvent local surety in the like sum;

(ii) The applicant shall forthwith surrender his pass port before release;

(iii) The applicant shall attend the Economic Offences Wing, Crime Branch, CID, Mumbai twice a week on every Monday and Wednesday between 04.00

p.m. to 06.00 p.m.;

(iv) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(v) The applicant shall co-operate with the Trial Court for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

(vi) Any observation/s made in this order shall not be constructed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vii) Application is disposed of in above terms.

(S.C.DHARMADHIKARI, J.)